United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

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74-2083

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P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2083

MEDWIN BENJAMIN,

Petitioner-Appellant,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Appellee-Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PETITIONER-APPELLANT

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I N D E X

TABLE OF AUTHORITIES

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-against-

COMMISSIONER OF INTERNAL REVENUE

Respondent-Appellee

- -x

BRIEF OF PETITIONER-APPELLANT

PRELIMINARY STATEMENT

This beief is submitted in support of the appeal of Petitioner-Appellant, Medwin Benjamin, taken from an order of the Honorable Bruce M. Forrester, United States Tax Court, New York, New York, on May 13, 1974 (10a), which order denied Appellant's motion to vacate orders dismissing his consolidated cases, Docket Nos. 6237-69 and 5056-73 entered October 17, 1973 (128a and 129a).

FACTS

Appellant brought two actions, one in 1969 and the second in 1973 for determinations as to the validity of income tax deficiencies assessed for the years 1965 through 1968, and 1969-1970, and for penalties under Sections 6651(a) and 6653(a) of the Internal Revenue Code of 1954 for the three years 1965 through 1968 (11a, 38a).*

*References are to pages of "Appendix to Brief of Petitioner-Appellant."

The penalties and deficiencies assessed against Appellant total $386,019.47 (128a, 129a). These penalties and deficiencies arise primarily out of Government claims that certain ordinary losses which Appellant alleges he sustained in 1965 as a result of the "destruction of his business assets" were improperly taken as deductions on his tax returns in the years in question (11a, 35a, 38a, 45a). Appellant's 1969 action was brought in the Tax Court in Miami, Florida, in which city Appellant then resided. While Appellant's case was before the Tax Court in Miami, Appellant entered into a stipulation of facts with Regional Council for the Internal Revenue Service, which stipulation was signed by both parties (147a). The stipulation reflected the fact that Appellant did sustain the claimed losses placing in issue only the question of which year Appellant sustained said losses. The stipulation at paragraph 15 listed those issues to be determined on the trial of this action, specifically:

(a) Did the loss occur in 1965 when the Court of Claims rendered its opinion on Petitioner's damage action?

(b) Did the loss occur in 1951 when the assets were seized?

(c) Did the loss occur in 1952 when the assets were alleged by Petitioner to have been sold pursuant to the seizure? (150a).

In March of 1971, the 1969 action was moved to the United States Tax Court in New York. The case was first heard on January 24, 1972 in New York before the Honorable William Quely (92a). At that time, Appellant appeared pro se. On the Court's own motion, the case was continued generally.

A second hearing was held on November 13, 1972 in New York before the Honorable Arnold Raum (48a). Appellant again appeared pro se. Appellant advised the Court of the stipulation of facts entered into in Miami, and that the Government attorneys in New York refused to acknowledge that stipulation (49a). The attorney for Respondent advised the Court that the Miami stipulation was "incomplete" and had never been formally filed with the Court, and that as different Government attorneys were now involved, they could necessarily view the case differently than the Government attorneys in Miami, and should therefore be entitled to prepare a new stipulation of facts and not be bound by the one signed by the Government attorneys in Florida (51a). Appellant stated that the Miami stipulation was not filed with the Court in New York because Appellant, appearing

pro se, was not aware of the Court rules requiring the filing of stipulations (51a). The Court informed Appellant that the Miami stipulation would not be acknowledged by the Court because it had not been filed. The Court advised Appellant that it can require the parties to enter into a full and complete stipulation; the Court then directed Appellant to read the Government's second stipulation and sign it if the matters contained therein were agreeable (58a). The case was then continued until November 20, 1972.

At a hearing on November 20, 1972 before Judge Raum, the Court stated for the record that the Miami stipulation was not binding because it was an unfiled stipulation (66a). Appellant, again appearing pro se, advised the Court that for the Court not to recognize the Miami stipulation, but instead to require him to enter into a stipulation prepared by the Government attorneys in New York, would be highly prejudicial to his case as he had relied on the issues as presented in the Miami stipulation (70a, 71a). The Court advised Appellant that notwithstanding which stipulation was filed, the Court has broad powers to examine any question or issue and can

do so notwithstanding stipulations filed with the Court (74a). The Court continued the case on Appellant's oral motion (83a).

The case was next heard on October 1, 1973 before the Honorable Bruce M. Forrester (87a). On Appellant's oral motion the Court consolidated his two cases (90a, 107a). The Court, in again considering the issue of the Miami stipulation, stated that a stipulation is "ambulatory" and is not binding until such time as it is filed (98a). The Court advised the parties that as no stipulations had yet been filed, that it would not require either party to file a stipulation, and that the case would go to trial without a stipulation (95a). The Court further stated that because the unfiled stipulation had never been a Court document, that it was therefore subject to withdrawal by either party, and that the Government withdrawal from the matters stipulated in the Miami stipulation would therefore be recognized (100a). The court set the matter down for trial on October 4, 1974. Later, on October 1, 1974, Appellant sent the Court a letter in which he advised the Court that he was unable to break a previous engagement which he had on October 4, 1974 in Delaware (133a, 136a, 137a, 139a). Appellant asked the Court to set the matter for trial during the following week (136a, 139a).

On October 4, 1974, when Appellant did not appear, the Court, on the motion of Respondent, dismissed Appellant's consolidated cases for lack of prosecution, and further determined Appellant's tax deficiencies and penalties in accordance with the Government's claims (125a, 128a, 129a).

Subsequently, Appellant made an informal request that the order of the Court, entered October 17, 1973, dismissing the case be vacated (130a). That motion was scheduled to be heard on May 13, 1974 (142a).

Thereafter in May of 1974, Appellant engaged Harold Greenberg, Esq. to represent him in further proceedings herein (173a). On May 13, 1974, Mr. Greenberg appeared on behalf of Appellant at a hearing at which the Honorable Bruce M. Forrester presided (174a). At that hearing, Mr. Greenberg advised the Court of the Appellant's letter to the Court informing the Court of his previous engagement (177a). Mr. Greenberg also told the Court that he believed that Appellant should have been represented by counsel from the very outset of the case and that Appellant had been ill-advised to proceed pro se (177a). Mr. Greenberg also indicated that he stood ready to prepare the case for trial if the Court vacated the dismissal (178a). With regard to the Miami stipulation, Mr. Greenberg advised the

Court of Appellant's reliance on that stipulation, and of the fact that Appellant would be prejudiced if that stipulation were not honored in that Appellant, in relying on that stipulation, foreclosed his right to obtain certain evidence that was necessary if the Miami stipulation were not accepted (180a).

The Court advised Mr. Greenberg that the Appellant's October 1, 1973 letter was not received by the Court until after the October 4 1973 hearing date (184a), and that Appellant had ignored both the advice and orders of the Court. The Court then denied Appellant's motion to vacate the orders on October 17, 1973 dismissing Appellant's consolidated action (191a).

POINT I

THE GOVERNMENT'S REFUSAL TO ABIDE BY A STIPULATION OF FACTS ENTERED INTO WITH APPELLANT IN JUNE OF 1971 IS CONTRARY TO ESTABLISHED PRINCIPLES OF CONTRACT LAW, IS MANIFESTLY UNJUST AND IS PREJUDICIAL TO APPELLANT'S CASE

In June of 1971, Appellant and Respondent entered into a stipulation of facts in Miami, Florida, where this action was then pending (147a). Subsequently in 1972, this case was removed from the Tax Court in Florida to the Tax Court in New York. When this matter appeared on the hearing calendar in New York on November 13, 1972, and when the parties

appeared before the Court, Appellant asked the Court to permit him to proceed to trial with the stipulation of facts as it had been prepared in Florida between the parties (49a).

At that November 13, 1972 hearing in New York, the Government advised the Court that the stipulation as prepared in Florida and duly entered into by and between Appellant and the Government contained matters which the Government attorneys in New York desired to change (50a). The Government attorneys at hearings subsequent to that November 13, 1972 hearing again advised the Court that they should not be bound by the stipulation signed by the Government attorneys in Florida prior to the removal of the case to New York, but should be permitted to submit a new stipulation as the case was being handled by different Government attorneys in New York (90a). In this connection, the Government prepared such a new stipulation which, unlike the prior signed document, required Appellant to prove aspects of his case which had previously been conceded by the Government (55a). When Appellant's case was eventually dismissed in November, 1973, and at the subsequent hearing when Appellant represented by his newly engaged attorneys sought to vacate the said dismissal, the Court took the position that a stipulation is "ambulatory" until it is actually filed with the Court (98a, 179a). The Court stated that it would not hold parties to a stipulation until such time as the stipulation is filed (163a).

In refusing to acknowledge the validity of the stipulation entered into between Appellant and Respondent in Florida, the Court denied the validity of what had been held by various Courts to be a document having contractual character. The Courts have stated that a stipulation cannot be abrogated if to do so would prejudice a party or operate in such a way as to inflict manifest injustice upon one of the subscribers thereto.

The Rules of Practice and Procedure of the United States Tax Court, effective January 1, 1974*, contain provisions regarding stipulations between parties in Rule 91 entitled "Stipulations for Trial". Section (a) of Rule 91 entitled "Binding Effect" provides as follows:

> "Binding Effect. A stipulation shall be treated, to the extent of its term, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or agreed upon by those parties. The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or in part, except that it may do so where justice requires. A stipulation and the admissions therein shall be binding and have effect only in the pending case and not for any other purpose, and cannot be used against any of the parties thereto in any other case or proceeding".

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*"Rule 2 of the Rules of Practice and Procedure in the United States Tax Court, entitled "Effective Date", states that new rules effective January 1, 1974, 'Govern all proceedings and cases commenced after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the Court their application, in a particular case pending when the rules take effect, would not be feasible or would work injustice, in which event the former procedure applies".

The above quoted Rule leaves it in the Court's discretion, "where justice requires", to permit a party to contradict a stipulation, in whole or in part. It is submitted that in the case at bar the Court abused its discretion in disregarding the stipulation executed between the parties in Miami, and in asking Appellant to enter into a new stipulation prepared by the Government attorneys in New York and presented to the Court (51a-52a). The Court failed to accord the Miami stipulation the force of contract and further failed to recognize the prejudicial effect that its ruling regarding the said stipulation had on Appellant's case.

The view that a stipulation between parties engaged in litigation has the force of contract has been acknowledged by the Courts.

In Fred M. Saigh, Jr. v. Commissioner of Internal Revenue, 26 T.C. 171 (1956), the Tax Court was presented with a motion to withdraw a settlement stipulation between a taxpayer and the Commissioner of Internal Revenue where the stipulation was entered into freely and fairly after long negotiations and independent investigation by the Internal Revenue Service. The Court in determining whether a stipulation could indeed be set aside when it is freely entered into, stated that "a...stipulation is in all essential characteristics a mutual contract whereby each party grants to the

other a concession of some rights as a consideration for those secured and the settlement stipulation is entitled to all the sanctity of any other contract." (Emphasis supplied). The Court noted that the stipulation was entered into fairly and freely and by the parties and was entirely in accord with their intentions; absent a showing that representatives of the Commissioner made mistakes or were unaware of certain matters or were moved by any improper inducement, the stipulation will be adhered to. See also: U.S.v.Town of Clarksville, 224 F. 2d 712 (4th Cir. 1955), where the Court refused to abrogate a stipulation entered into "freely and fairly by both parties."

In Winter v. Welker, 174 F. Supp. 836 (E.D. Pa. 1949) the Court in upholding a stipulation entered into between the parties, stated:

> "It is well settled that where there is neither averment nor proof that anything was omitted from or added to an agreement by fraud, accident, or mistake, such agreement is to be construed exactly as written. (citation omitted). And in the absence of such averments and proofs, a stipulation signed by the parties and their attorneys cannot be set aside by the Court." (Emphasis added).

Further support for the sanctity of stipulations between parties when such stipulations are freely entered into is found in Norwich Pharmacal Company v. Rakway, 189 F. Supp. 349 (E.D. Pa., 1960) where the Court recognized the binding effect of a stipulation between parties to a litigation when

such stipulation is freely entered into by the parties with the advice of counsel. The Court ruled that "stipulations voluntarily entered into by counsel for the parties with the approval of the court must be given full force and effect in the absence of fraud, accident, or mistake ... Mere inattention or inadvertence of counsel is not enough". As the Court went on to state, stipulations "should be open to unilateral challenge only on the basis of the most fundamental and compelling reasons".

At bar, the stipulation entered into in Miami between Appellant and the Government in accordance with the cases above cited, should be viewed as a contract between the parties. The contract was freely entered into. Indeed, the attorneys for the Government in Miami are engaged full time in litigation of this sort, and were well aware of what they were signing. Because of possible inadvertence of the Government attorneys in Miami, their New York counterparts should not be permitted to extricate the Government from a stipulation which the New York attorneys regard as granting a concession to Appellant.

Appellant, until May of 1974, appeared pro se in this action. The stipulation of facts as entered into between Appellant and the Government in Florida was such that Appellant believed that his case was not a difficult one to prove

as the stipulation obviated the introduction of voluminous financial records and other matters (59a, 71a, 91a, 97a). Appellant believed that even without legal training he could handle the prosecution of his case (91a).

In seeking to introduce a new stipulation of facts, the Government rendered Appellant's case far more convoluted and more difficult to prove than under the prior signed stipulation. Unquestionably, Appellant's case was prejudiced by material changes in the stipulation prepared by the Government attorneys in New York, which stipulation the Court requested Appellant to sign (58a). Because of the difficulty of proving issues raised by the new stipulation, Appellant recognized that he could not proceed pro se, and that if he were to engage counsel he would have to go to great expense to prove his case (54a,60a). It is submitted that the Tax Court in advising Appellant to sign the newly prepared stipulation failed to take into account the prejudice to Appellant's case which underlaid said action.

The Supreme Court of the United States in Aurrecoechea v. Bangs, 110 U.S. 47, 3 S. Ct. 39 (1884) quoted and cited in 73 Am. Jur. 2d 512 ("Stipulations") held that where a stipulation has been entered into, one of the parties will not be allowed to withdraw from the agreement thus made without the consent of the other, except by leave of the Court upon cause shown. It is submitted that the inadvertence or error of

Government counsel in Florida was not sufficient to justify the Court in refusing to acknowledge a valid signed stipulation between Appellant and the Government.

In two recent cases the 5th Circuit set limits on the Court's right to release parties from stipulations.

In Logan Lumber Co. v. Commissioner of Internal Revenue, 365 F. 2d 846 (5th Cir. 1966), the Court stated that a party may be relieved of a stipulation to prevent manifest injustice so long as suitable protective terms or conditions are imposed to prevent substantial and real harm to the adversary. In Central Distributors v. M.E.T., Inc. 403 F. 2d 93 (5th Cir. 1968), the Court carefully prescribed guidelines whereby stipulations between parties could be modified noting that "when a modification of a stipulation is allowed, the court is responsible for seeing that suitable protective terms are imposed to prevent substantial and real harm to the adverse party".

In the case at bar, the Government sought to extricate itself from what they regarded as a stipulation which was unfavorable to their position. They sought to do so without regard for the prejudicial effect that the newly proposed stipulation might have on Appellant. In advising the Appellant to sign the new stipulation, the Tax Court ruled that a stipulation of facts is ambulatory and can be replaced or modified

until such time as it is filed with the Court. In ruling in this matter, the Court did not recognize or acknowledge the effect that the abandonment of the prior Miami stipulation would have on Appellant's case. The harm to Appellant is indeed substantial in that Appellant will now be required to prove a far more difficult case and in doing so expend large sums of money on legal fees. The prejudicial effect of the Court's ruling is manifest. As stated in 73 Am. Jur. 2d 6 ("Stipulations"):

> "One may be estopped by an agreement or stipulation made in a judicial proceeding, and it has been said that the case for estoppel by stipulation is greatly strengthened where the stipulation has been acted upon and the adverse party would be injured if it were not given effect. Thus, a stipulation cannot be contradicted by evidence tending to show the facts to be other than as stipulated".

In Commissioner of Internal Revenue v. Chase Manhattan Bank, 259 F. 2d 231 (5th Cir. 1958) the Court discussed generally the Government's dual responsibility in litigation with taxpayers, stating: "the Commissioner owes a duty to the United States Government to litigate zealously in the interest of collecting taxes, but he owes a duty to all taxpayers, including the litigating taxpayer, to see that the tax law is applied justly". The Court continued, stating that the use of federal procedure should not be such as to

create "a contest between two legal gladiators". It is submitted that the Government seeking to escape from the stipulation duly entered into and acknowledged between itself and Appellant, did so without regard for the prejudice that that action would have on the presecution of Appellant's case.

At bar, Appellant entered into a stipulation with the Government in Miami, relying on it as a valid memorandum of the issues to be presented to the Court on the trial of Appellant's action (78a). Although the case was subsequently moved to the Tax Court in New York it is unreasonable for the same Respondent, the Government, to contend that a stipulation signed by their office in Miami should not be honored by their office in New York. Not only was the Miami stipulation, when signed by the parties, a document entitled to the force of contract, but it was prejudicial to Appellant's case for the Government to attempt to substitute a new stipulation and for the Court to advise Appellant to sign said stipulation.

POINT II

THE COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION TO VACATE THE DISMISSAL OF HIS CASE.

In the light of the factual history of this action, the Court's dismissal of Appellant's case and the Court's subsequent denial of Appellant's Motion to vacate the said dismissal, was an abuse of the Court's discretion, which is tantamount to a denial of due process.

Shortly after Appellant brought his action in 1971, Appellant has appeared pro se. Appellant appeared without an attorney at various hearings for almost three years (48a, 62a, 87a) until May, 1974, when he engaged the services of Harold Greenberg, Esq. (173a) for the purpose of vacating a dismissal of his case ordered by the Honorable Bruce M. Forrester of the United States Tax Court on October 4, 1973. (128a, 129a)

Although in theory the Court should not distinguish between a party represented by counsel and a party appearing pro se, in practice the obvious distinction between parties represented by counsel and parties appearing pro se should be subject to some recognizance.

An individual represented by counsel, which counsel seeks to take advantage of the Court, ought not be permitted to follow such a course of conduct and should be subject to the most stringent of sanctions. On the other hand, an individual appearing pro se, particularly an individual without legal background or training, unversed in court procedures and in the rules of conduct which prevail in the courts, should not be as severely penalized as has been Appellant in the case at bar.

Appellant has now retained counsel for the further prosecution of this action. Appellant and his counsel stand ready to proceed with this case forthwith if the dismissal of Appellant's case is vacated. Appellant's present counsel recognizes that considerable time of the Court has been consumed in connection with this action. Because of this fact, Appellant stands ready to try this case on the first trial date which the Court will schedule.

Admittedly, the Tax Court has discretionary power in dismissing cases and in ruling on whether a taxpayer has reasonable grounds to vacate an order of dismissal. In the case at bar, however, Appellant's conduct is not such that the drastic action taken by the Court is sustainable. Appellant's attempt to contact the Court by letter prior to the October 4 hearing was not an act of defiance but an

effort made in good faith to obtain a one-week adjournment. Had the letter arrived prior to the October 4 trial date the Court may have granted a one-week adjournment. It cannot be said that Appellant's request for such an adjournment was unreasonable.

In addition, the dismissal by the Court on October 4, 1973 for both the 1973 and the 1969 cases and the refusal of the Court to subsequently vacate the said dismissal constituted an abuse of discretion, particularly in the light of the fact that the 1973 case, when the Court dismissed it on October 4, 1973, was on the Court calendar for the first time. The 1973 action was consolidated with the 1969 case on October 1, 1973 on the oral motion of the Appellant (107a). The Court then set both cases for trial on October 4 (107a). Because the 1973 case was on the Court calendar for the first time on October 4, it was improper for the Court to dismiss both cases and to determine, as a result of the dismissal of the 1973 case, that there were tax deficiencies in Appellant's income tax for the tax years 1969 and 1970 in the amounts of $99,494.54 and $3,592.63 (129a). The Court's dismissal of Appellant's 1969 and 1973 cases, particularly the 1973 case was harsh as the 1973 case would never have been before the Court on October 4, 1973 had not the Appellant orally moved to have that case consolidated with his 1969 case three days earlier.

In cases where Appellate Courts have sustained dismissals of taxpayers' cases, the Appellate Courts have supported such dismissals with a history of conduct where taxpayers clearly resisted litigation. Such conduct the Appellate Courts have ruled warrants drastic sanctions. These cases can be distinguished from the case at bar where Appellant's conduct was not such as to mandate a dismissal of this case and the resulting determination of huge tax deficiencies against him.

In Montgomery v. Commissioner of Internal Revenue, 367 F.2d 917 (9th Cir. 1966), the taxpayers for four years failed to produce records after having promised to do so. The taxpayers' failure to produce the records justified the Court's statement that they had "pursued a studied course of defiance of the Government and its tax authorities".

In Janousek v. French, 287 F.2d 616 (8th Cir. 1961), the Court held that the denial of a continuance not requested in accordance with the local rules, was proper in the absence of a showing that it was impossible for plaintiffs to be present for the trial. In addition, the Court found that there was no evidence that plaintiffs made any request or attempt to have the case postponed until a later date in the Trial Term when they would be prepared for trial. Accordingly, the Appellate Court did not find an abuse of discretion.

At bar, plaintiff's letter sent prior to the trial date but received thereafter is a factor which distinguishes

plaintiff's situation from that in Janousek, supra. Plaintiff advised the Court of his willingness and desire to proceed one week subsequent to the date set by the Court. Such a request cannot be said to demonstrate the "defiance of the Government and its taxing authorities" which the Court so forcefully condemned in Montgomery, supra.

Notwithstanding the fact that all of Appellant's actions at the various hearings in this case over a period of two years cannot be condoned, the events surrounding the October 4, 1973 hearing and dismissal of Appellant's case should be considered by the Court in determining whether the drastic action taken in Appellant's case was warranted. Appellant's letter to the Tax Court in New York subsequent to the October 1, 1973 Hearing, in which he asked the Court to adjourn the October 4, 1973 trial date because of an urgent and important engagement which Appellant had in Delaware, was apparently received by the Court on October 5, 1973, one day subsequent to the date set for trial. That letter, which was attached to Appellant's Motion papers seeking a vacation of the Order of Dismissal, is dated October 1, 1973 (139a). Unfortunately, the said letter was received by the Court too late (183a). The fact, however, that Appellant prepared and sent the Court a letter should distinguish his case from those situations where petitioners simply do not appear and the Courts order dismissals.

Had the Appellant's letter been received by the Court on October 3, 1973, or the morning of October 4, 1973, it is questionable whether the Court would have dismissed Appellant's case.

Furthermore, because of the fact that Appellant is not an attorney and was acting pro se at the time he sent the letter, it is not unreasonable for the Court to accept his contention that he, in the utmost good faith, believed that his letter, if received in time by the Court, would be sufficient to adjourn his trial date for a short period of time. In the case at bar, however, Appellant had no way of knowing that his case involving a large tax liability and interest totalling $386,019.47, would be dismissed. Unfamiliar with court practice and with the extraordinary sanctions and measures available to the Court, Appellant was taken completely by surprise when he learned of the dismissal of his case.

CONCLUSION

THE ORDER OF THE COURT BELOW SHOULD BE REVERSED.

Dated: New York, N. Y.

Respectfully submitted,

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AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

.....MONROE ROSEN.................................*being duly sworn, says that on the* 13th .....*day of* DECEMBER.........., *1974*., *he served* ....2 COPIES. *of the annexed* ....BRIEF.............. *upon* Scott P. Crampton Asst. Attorney General.. *Esq., the attorney for the* ....Respondent.......................... *herein by depositing a copy of the same, inclosed in a postpaid wrapper in a post office box situated at 150 Christopher Street, in the Borough of Manhattan, City of New York, regularly maintained by the government of the United States in said city directed to the said attorney at* ~~No~~. TAX DIVISION United States Dept. of Justice.. *in the* ~~Borough of~~ Washington, D.C.., ~~City of New York~~, *being the address within the State therefore designated by him for that purpose.*

Monroe Rosen

Sworn to before me, this
13th.... *day of* ...December.............., *19*74.

[signature]
Notary Public, State of New York
Qualified in New York County
Commission Expires March 30, 1976